

SENATE BILL 2198
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 13,
Chapter 24, Part 3, relative to telecommunications
services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) Notwithstanding any provision of law to the contrary, a municipal, county or regional planning commission or any municipal or county legislative body, hereinafter referred to as an authority, that has adopted planning and zoning regulations may plan for and regulate the siting of wireless telecommunications support structures in accordance with locally adopted planning or zoning regulations and this chapter.

(b) Any person that is engaged in the business of providing the required wireless telecommunications infrastructure and that proposes to construct a wireless telecommunications support structure within the jurisdiction of a planning authority that has adopted planning and zoning regulations in accordance with this title shall:

(1) Submit a copy of the applicant's completed uniform application to the appropriate planning authority to construct a wireless telecommunications support structure.

(2) Include in any contract with an owner of property upon which a wireless telecommunications support structure is to be constructed, a provision that specifies, in the case of abandonment, a method that the applicant will follow in dismantling and removing such structure, including a timetable for removal; provided, however, for the purposes of this subdivision only, a wireless

telecommunications support structure that is not operated for more than eighteen (18) consecutive months may be considered abandoned; and

(3) Comply with any local ordinances concerning land use, subject to the limitations imposed by this chapter.

(c) All information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the wireless telecommunications support structure then being reviewed, shall be deemed confidential and proprietary within the meaning of title 10, chapter 7, part 5. The local planning authority shall deny any public request for the inspection of this information, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct as provided in § 39-16-402.

(d) After an applicant's submission of the uniform application to construct a wireless telecommunications support structure, the planning authority shall:

(1) Review the uniform application in light of its agreement with the comprehensive plan and locally adopted zoning regulations;

(2) Make its final decision to approve or disapprove the uniform application; and

(3) Advise the applicant in writing of its final decision within sixty (60) days commencing from the date that the uniform application is submitted to the planning authority or within a date certain specified in a written agreement between the local planning authority and the applicant. If the planning authority fails to issue a final decision within sixty (60) days and if there is no written agreement between the local planning authority and the applicant to a specific date for the planning authority to issue a decision, the uniform application is deemed approved.

(e) If the planning authority disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a wireless telecommunications support structure shall be issued until the planning authority approves the uniform application or the sixty (60) day time period has expired, whichever occurs first.

(f) The planning authority may require the applicant to make a reasonable attempt to co-locate additional telecommunications facilities on an existing structure. A planning authority may provide the location of existing wireless telecommunications support structures on which the authority deems the applicant may successfully co-locate its telecommunications facilities. If the local planning authority requires the applicant to attempt co-location, the applicant shall provide the local planning unit with a statement indicating that the applicant has:

(1) Successfully attempted to co-locate on structures designed to host multiple wireless telecommunications service providers' facilities or other suitable structure capable of supporting the applicant's facilities, and that identifies the location of the tower or suitable structure on which the applicant will co-locate its telecommunications facilities; or

(2) Unsuccessfully attempted to co-locate on a wireless telecommunications support structure designed to host multiple wireless telecommunications service providers' facilities or another suitable structure capable of supporting the applicant's facilities and that:

(A) Identifies the location of the wireless telecommunications support structure or other structures on which the applicant attempted to co-locate; and

(B) Lists the reasons why the co-location was unsuccessful in each instance.

(g) The local planning authority may deny a uniform application to construct a wireless telecommunications support structure based on an applicant's unwillingness to attempt to co-locate additional telecommunications facilities on any new or existing wireless telecommunications support structure or other structure.

(h) If a co-location occurs, such co-location may not be considered an expansion of a nonconforming use, and the appropriate authority may not impose additional costs or operating restrictions on the applicant for such co-location.

(i) A party aggrieved by a final action of a planning authority under the provisions of this chapter may bring an action for review in any court of competent jurisdiction.

SECTION 2. In addition to the requirements of Section 1, a uniform application shall include:

(1) The full name and address of the applicant;

(2) A written report, prepared by a professional engineer or land surveyor, of findings as to the proximity of the proposed site to flood hazard areas;

(3) Clear directions to the proposed site, including highway numbers and street names;

(4) A site development plan or survey, signed and sealed by a professional engineer registered in Tennessee, that shows the proposed location of the wireless telecommunications support structure;

(5) A vertical profile sketch of the wireless telecommunications support structure, signed and sealed by a professional engineer registered in Tennessee, indicating the height of such structure and the placement of all known and all future proposed antennas; and

(6) A brief description of the character of the general area in which the wireless telecommunications support structure is proposed to be constructed, which includes the existing land use for the specific property involved;

SECTION 3. In regulating the placement of wireless telecommunications support structures, a municipal or county or regional planning commission or a municipal or county legislative body may not:

(1) Regulate the placement of a wireless telecommunications support structure on the basis of the environmental effects of radio frequency emissions to the extent that these facilities comply with the regulations of the Federal Communications Commission concerning radio frequency emissions;

(2) Institute a moratorium upon the siting of wireless telecommunications support structures;

(3) Charge an application fee or any sort of consulting fee or required building permit fee that exceeds an amount that is reasonably related to expenses associated with processing an application to construct a cellular antenna tower, or charge any such fee or fees totaling more than one thousand five hundred dollars (\$1,500). Such fee amounts shall not be raised after April 15, 2005;

(4) Regulate the placement of antennas or related equipment on an existing wireless telecommunications support structure;

(5) Require the submission of application materials in addition to those required by this act;

(6) Require the applicant to provide any sort of justification of radio frequency need;

(7) Require financial surety for the removal of a wireless support structure;

(8) Restrict the placement of emergency power systems; or

(9) Limit the duration of any permit or require the reevaluation of a permit.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect on July 1, 2005, the public welfare requiring it.